

FILED

January 25 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE  
STATE OF MONTANA

Supreme Court Cause No. \_\_\_\_\_

**DA 10-0035**

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*Attorneys for Appellant*

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JAN 25 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

PATRICK CHEFF,

Plaintiff/Appellee,

v.

BNSF RAILWAY COMPANY, a  
Corporation

Defendant/Appellant.

**DEFENDANT/APPELLANT  
BNSF RAILWAY  
COMPANY'S NOTICE OF  
APPEAL**

NOTICE is given that BNSF Railway Company, the Appellant above-named and who is Defendant in that cause of action filed in the Eighth Judicial District, in and for the County of Cascade, as Cause No. DDV-08-1121, hereby

appeals to the Supreme Court of the State of Montana from the Order Denying BNSF's Motion for New Trial, Granting Motion for Judgment Setoff, and Denying Motion for Interest on Setoff entered in such action on the 11th day of January, 2010. Appeal is further taken from the Court's Order in re Plaintiff's Motion *s in Limine* dated July 10, 2009, from the Court's June 16, 2009 Order in re Cross-Motions for Summary Judgement which invalidated the Release Contract between Plaintiff and BNSF and from the Amended Judgment dated January 19, 2010.

**THE APPELLANT FURTHER CERTIFIES:**

1. That this appeal is subject to the mediation process required by Mont. R. App. P. 7. The money amount resulting from the Order Denying BNSF's Motion for New Trial, Granting Motion for Judgment Setoff, and Denying Motion for Interest on Setoff entered on January 11, 2010, is not less than \$5,000.
2. That this appeal is an appeal from the Order Denying BNSF's Motion for New Trial, Granting Motion for Judgment Setoff, and Denying Motion for Interest entered on January 11, 2010, in the Montana Eighth Judicial District Court, Cascade County, in Cause No. DDV-08-1121. A true and correct copy of that District Court's Order is attached hereto as Exhibit "A." This appeal is also an appeal taken from the Amended Judgment dated January 19, 2010 and attached

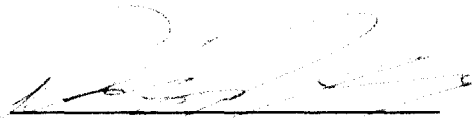
hereto as Exhibit "B." This appeal is further an appeal from the District Court's Order Order in re Plaintiff's Motions *in Limine* dated July 10, 2009, attached hereto as Exhibit "C." Finally, this appeal is taken from the Court's June 16, 2009 Order in re Cross-Motions for Summary Judgement which invalidated the Release contract between Plaintiff and BNSF. That order is attached as Exhibit "D."

3. That all available transcripts of the proceedings in this case have been ordered from the court reporter contemporaneously with the filing of this notice of appeal.

4. That included herewith is the filing fee prescribed by statute.

DATED this 22nd day of January, 2010.

BOONE KARLBERG P.C.



Randy J. Cox

Scott M. Stearns

*Attorneys for Defendant/Appellant BNSF*

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing *Defendant/Appellant BNSF's Notice of Appeal* with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing *Defendant/Appellant BNSF's Notice of Appeal* upon the Clerk of the District Court and each attorney of record in the above-referenced District Court action as follows:

Clerk of District Court  
Eighth Judicial District Court  
Cascade County Courthouse  
415 - 2<sup>nd</sup> Avenue N.  
Great Falls, Montana 59401

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Attorney for Plaintiff

DATED this 22nd day of January, 2010.

BOONE KARLBERG P.C.



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